

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Firexo, Inc.)	Case No.: 3:21-CV-02336
)	
Plaintiff,)	Judge Jack Zouhary
)	
vs.)	
)	
Firexo Group Limited,)	
)	
Defendant.)	

JOINT STATEMENT

Plaintiff Firexo, Inc. (“Inc.”) and Defendant Firexo Group Limited (“Group”) (collectively, the “Parties”) submit the following Joint Statement regarding the jurisdictional briefing requested by this Court on July 11, 2022.

I. BACKGROUND

A. The Parties and relevant individuals

Group is a company incorporated and registered in the United Kingdom. Its primary business is the manufacture, distribution, and sale of fire extinguishing equipment.

Inc. is/was a Joint Venture between Group and Scot Smith (“Smith”). Inc’s business is/was the sale and distribution of Group’s fire extinguishing products within the United States.

The original incorporator and sole original shareholder of Inc. was David Breith (“Breith”), a resident of the United Kingdom and the CEO of Group.

Smith and Group are the original and only investors in Inc. Smith is a resident of Ohio. Smith is not a party to this litigation but is a party to a related case pending before this Court. *See Smith v. Firexo Group Limited*, Case No. 3:21-cv-2266.

Smith and Breith, among others, serve on the Board of Directors for Inc.

B. The Joint Venture Agreement

On or about August 3, 2019, Group and Smith entered a Shareholder's Agreement (the "Joint Venture Agreement" or "JVA"). A true and accurate copy of the JVA is attached as Exhibit A. Pursuant to the JVA, Group and Smith agreed to jointly own Inc., which at the time was an existing Florida corporation. Inc.'s business was to be carried out in accordance with the terms and conditions of the JVA. And both Group and Smith agreed to exercise their rights relating to Inc. consistent with the terms of the JVA. *See* Exh. A at WHEREAS paragraphs.

The JVA contains a provision prohibiting oral modification:

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Id. at Section 23.1.

The laws of England and Wales apply to any dispute or claim arising out of or in connection with the JVA or its subject matter:

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

Id. at Section 33.1.

And the courts of England and Wales have exclusive jurisdiction over disputes or claims arising out of or in connection with the JVA or its subject matter:

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation.

Id. at Section 33.2.

C. The litigation pending between the Parties

There are currently three pending lawsuits involving Inc., Group, and Smith. Two of those cases are pending before this Court. The other is pending in the United Kingdom.

1. The United Kingdom Litigation

The Parties have already set forth their respective positions regarding the United Kingdom litigation. Briefly, the litigation was originally filed by Group, who sought a determination from the court regarding certain provisions in the JVA involving Smith's entitlement to shares in the event Group underwent an IPO. Smith filed a Defence and Counterclaim, which objected to Group's interpretation of the IPO provisions and raised several other issues. Shortly thereafter, Group voluntarily dismissed its claim in the United Kingdom and Smith filed the equivalent of a partial motion for summary judgment. For various reasons, none of which are relevant here, Group did not present any contrary arguments to Smith's partial motion.

The court in the United Kingdom granted Smith's motion, adopting Smith's interpretation of the IPO provisions in the JVA. Smith's remaining claims, which involve claims against Group for violation of the JVA and damages, are set for trial in the United Kingdom in late-2023.

2. The Ohio Litigation

As this Court is aware, there are two cases pending in Ohio. One was filed by Smith in his individual capacity and involves allegations of securities fraud under Ohio and federal laws. *See Smith v. Firexo Group Limited*, Case No. 3:21-cv-2266. The other is this litigation, filed by Inc., at the direction of Smith in his capacity as Executive Officer of Inc, alleging Group breached its contract with Inc., and/or breached the warranty of merchantability and fitness. Inc. also contends Group is liable for alleged fraudulent misrepresentations about its products made during the Parties' business relationship.

D. Group terminates the JVA

Group terminated the JVA on December 9, 2021, with an effective date of December 16, 2021. Group cited numerous reasons for the termination, including the filing of litigation against Group in Ohio and the United Kingdom. A true and accurate copy of the correspondence terminating the JVA is attached as Exhibit B. A true and accurate copy of Smith's response is attached as Exhibit C. The Parties dispute the validity of Group's termination of the JVA.

II. Brief Summary of the Parties' Arguments

A. Summary of Group's Argument

Group contends the Court lacks jurisdiction to hear this case based on the forum selection clause of the JVA and the JVA governs the Parties' relationship, including Section 33.2 of the JVA, which gives the courts of England and Wales exclusive jurisdiction over Inc.'s claims.

B. Summary of Inc.'s Argument

Inc. contends that this Court has jurisdiction to determine its claims and that the JVA's forum selection clause is inapplicable to Inc. in this litigation.

Submitted by:

/s/ Paul T. Belazis (via email 8.12.2022)

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